

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No. 4811 of 2011

Duryodhan Pal

.... ***Petitioner***
Mr.K.P.Mishra, Sr.*Advocate*

-versus-

State of Odisha and others

.... ***Opposite Parties***
Mr.P.C.Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

16.02.2022

Order No.

1. This matter is taken up through Hybrid arrangement (virtual/physical mode).
2. None appears for the Petitioner when the matter is called. Heard Mr.P.C.Das, learned Additional Standing Counsel.
3. The present writ application has been filed by the Petitioner with the following prayer: *सम्बन्धित न्यायो*

“To quash the order of rejection dated 18.10.12011 passed by the respondent No.2 under Annexure-4.

To direct the respondent No.2 to consider his case for retrospective regularization on the notional basis with all consequential benefits as well as consequential retiral benefits in terms of the principle laid down by the Hon’ble Apex Court in “Umadevi Case” especially in Para-53 of the said judgment”

4. Earlier the Petitioner had approached the learned Orissa Administrative Tribunal by filing O.A.No.327 of 2010. The said original application was disposed of vide order dated 10.11.2010 directing for consideration of his case for retrospective regularisation

with consequential benefits in accordance with the Government Order in this regard. The Petitioner approached the Joint Director, Consolidation, Range II, Cuttack. By order dated 18.10.2011 under Annexure-4, the Joint Director, Consolidation Range-II Cuttack, it appears, has rejected the representation of the Petitioner on the ground that there is no mandatory provisions for regularisation before his retirement with reference to clarification received from the Government in Revenue and Disaster Management Department vide letter dated 14.09.2011 and Board's letter dated 12.10.2011.

5. On a careful scrutiny of the application, it is seen that the Tribunal in the case of *Gunanidhi Swain-vrs-State of Orissa* in O.A.No.3248(C) of 1997 vide order dated 17.01.2009 directed for regularisation of the applicant in that case and granted pensionary benefit and retiral dues.

6. Learned counsel for the Petitioner relies upon the judgment of this Court in the case of *Abhaya Chanrana Mohanty vrs. State of Odisha*, WPC(OAC) No.3494 of 2013 disposed of on 14th July, 2021. In the said case, the Petitioner, who was a work charged employee had claimed the pensionary benefits after his retirement with retrospective effect. This Court relying upon the order of the Hon'ble Supreme Court of India in Civil Appeal No.21498 of 2012 thereby dismissing the State Government's Appeal and confirming the order dated 19th December, 2011 of this Court passed in W.P.(C) No.5377 of 2010 in the case of one *Narusu Pradhan vrs. State of Odisha* allowed the writ petition and granted pensionary benefits as prayed for in that case.

7. Similarly, learned counsel for the Petitioner has also cited another order of a Division Bench of this Court in the case of

Chandra Nandi vrs. State of Odisha and others : reported in 2014(I) OLR 734. In the said reported case, this Court had given a direction to notionally regularize service of the Petitioner prior to his superannuation from service and accordingly, calculated the Petitioner's entitlement including the pensionary benefits.

8. So far the case of one Nansu Pradhan is concerned and which has been referred to by this Court in ***Abhaya Charan Mohanty*** (supra), said ***Narusu Pradhan*** had filed O.A. No.1189(C) of 2006 praying for retiral benefits. Learned Tribunal allowed the retiral pensionary benefits in his favour vide order dated 11th June, 2009. The order dated 19th June, 2009 was challenged by the State Government before this Court in W.P.(C) No.5377 of 2010. This Court dismissed the writ petition on 19th December, 2021 and confirmed the order passed by the learned Tribunal. Therefore, the State Government preferred an appeal before the Hon'ble Supreme Court of India bearing Civil Appeal No.22498 of 2012. The said appeal was also dismissed on 7th January, 2013 by the Hon'ble Supreme Court of India thereby confirming the orders passed by the learned Orissa Administrative Tribunal as well as this Court. Since the case of ***Narusu Pradhan*** is a case of work charged employee, who had worked for more than five years in work charged establishment had been allowed to receive pensionary benefits by virtue of order passed by the learned Odisha Administrative Tribunal, which was ultimately confirmed by the Hon'ble Supreme Court of India, the principle laid down in that case has become a Law of the land as declared by the Hon'ble Supreme Court of India and is binding on this court while deciding cases of similar nature. Therefore, it is no more open to the State Government to take stand

contrary to the principle finally approved by the Hon'ble Supreme Court of India.

9. In such view of the matter the order dated 18.10.2011 under Annexure-4 impugned in this case is hereby set aside. The authorities are directed to reconsider the case of the present Petitioner keeping in view the principle of law laid down in *Gunanidhi* (supra).

10. The writ application is accordingly disposed of.

11. Issue urgent certified copy as per Rules.

RKS

